

FILED

DEC - 1 2014

Clerk, U.S. District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

CASSANDRA MARIE SEAL,

Defendant/Movant.

Cause No. CR 11-120-BLG-SPW

ORDER

On April 3, 2014, Defendant/Movant Cassandra Marie Seal filed a motion to vacate, set aside, or correct her sentence under 28 U.S.C. § 2255. Seal is a federal prisoner proceeding pro se.

On August 28, 2014, Claims 2 and 3 in Seal's § 2255 motion were denied. Order (Doc. 186) at 2-3, 5 ¶ 1. After the United States was given an opportunity to investigate and respond to Seal's remaining claim, Claim 1, it responded by conceding the merit of Claim 1. Resp. to Order (Doc. 187) at 2.

On September 26, 2014, the Court found that Seal is entitled to relief on Claim 1. Counsel who represented Seal at the time of sentencing knew Seal wanted to appeal, but counsel failed to act on Seal's wishes. Counsel is obliged to

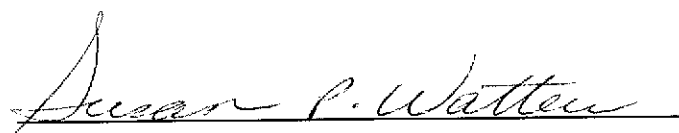
file a notice of appeal if the defendant instructs her to do so, regardless of counsel's opinion of the merit or wisdom of appealing. *United States v. Sandoval-Lopez*, 409 F.3d 1193, 1197 (9th Cir. 2005). Counsel must also consult with a defendant about an appeal if the defendant expresses interest in an appeal or if a reasonable person in the defendant's position might be interested in appealing, *Roe v. Flores-Ortega*, 528 U.S. 470, 478 (2000). *See also* 9th Cir. R. 4-1(a), (c). Counsel's failure to file the notice of appeal was deficient performance. Seal was prejudiced by loss of her opportunity to appeal. *Peguero v. United States*, 526 U.S. 23, 28 (1999).

The appropriate remedy is to grant the § 2255 motion, vacate the judgment, and then re-enter it, thus restarting the time to appeal. *Sandoval-Lopez*, 409 F.3d at 1198 & n.25. Seal has now stated, *see* Resp. to Order (Doc. 191) at 1, that she wishes to be represented by new counsel on appeal.

Accordingly, IT IS HEREBY ORDERED as follows:

1. The Federal Defenders of Montana shall promptly locate conflict-free counsel to represent Seal.
 2. Counsel shall immediately file a Notice of Appearance on Seal's behalf.
- At that point, the Court will issue a formal order of appointment and will vacate and re-enter the judgment to restart the time to appeal.

DATED this 1st day of ~~November~~ ^{December}, 2014.

A handwritten signature in cursive script, reading "Susan P. Watters", is written over a horizontal line.

Susan P. Watters
United States District Court

cc: FDOM